

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

TROPICAL FRUIT, S.E.;
AVSHALOM LUBIN;
CESAR OTERO ACEVEDO; and
PEDRO TOLEDO GONZALEZ,

Defendants.

Civil Action No. 97-1442-DRD

INFORMATIVE MOTION

Plaintiff, United States of America, on behalf of the U.S. Environmental Protection Agency (“U.S. EPA”), respectfully moves this Honorable Court as follows:

1. On or about December 16, 2004, the United States filed a Motion to Enforce the Consent Decree (“the Consent Decree”) this Honorable Court entered on or about October 25, 2001 (docket entry #94). The United States’ Motion also sought stipulated penalties and to hold Defendants in contempt. Thereafter, the United States filed a number of memoranda and other pleadings in support of its Motion.

2. Defendants opposed the United States’ Motion, asserted that the United States was not entitled to the relief it sought and filed a number of memoranda and other pleadings in support of its opposition.

3. On July 14, 2005, this Honorable Court held a status conference in which it heard argument on the United States’ Motion and Defendants’ opposition. The Court scheduled a

hearing on this matter for September 7, 2005.

4. The parties have now reached an agreement to completely resolve all aspects of the United States' Motion to Enforce the Consent Decree and its request for stipulated penalties and contempt, which Settlement Agreement is subject to the approval of senior officials at EPA and the Department of Justice ("DOJ"). Accordingly, the United States respectfully requests an adjournment of the September 7, 2005 hearing so that the United States can seek the approval of the necessary officials at EPA and DOJ. The United States respectfully requests until September 16, 2005 to submit and lodge a fully executed Settlement Agreement. During this period, Defendants will provide to the United States all Defendants' necessary signatures on the Settlement Agreement.

5. The proposed Settlement Agreement would modify certain injunctive relief provisions of the Consent Decree. Accordingly, after the United States lodges any Settlement Agreement, it will publish Notice of the settlement in the Federal Register in accordance with 28 C.F.R. § 50.7 and 42 U.S.C. § 9622(i). Similarly, the United States published notice of the Consent Decree in the Federal Register (on August 27, 2001, the United States published Notice of the Consent Decree in the Federal Register, 66 Fed. Reg. 45058-59) and moved for entry of the Decree after the conclusion of the 30-day public notice period. In order to expedite matters, the United States expects to shorten the public notice process for the proposed Settlement Agreement to 15 days. After the conclusion of this 15 day public notice period, the United States will move this Honorable Court for approval of the Settlement Agreement, unless the United States receives comments that disclose facts or considerations which show that the Agreement is inappropriate, improper or inadequate within the meaning of 28 C.F.R. § 50.7.

6. Counsel for Defendants, Attorney Jaime Sifre, has authorized the United States to represent that Defendants support this Informative Motion.

WHEREFORE, the United States respectfully requests an adjournment of the September 7, 2005 hearing and requests until September 16, 2005 in order to submit a Settlement Agreement which would be fully executed by the United States and Defendants and which would fully resolve the United States' Motion to Enforce the Consent Decree, for stipulated penalties and for contempt.

Respectfully submitted,

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division

/s/ Henry S. Friedman
HENRY S. FRIEDMAN, Senior Attorney
USDC - PR # G00105
JEROME MACLAUGHLIN, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Benjamin Franklin Station
P.O. Box 7611
Washington, D.C. 20044
(202) 514-5268

H. S. GARCIA
United States Attorney
District of Puerto Rico

ISABEL MUNOZ
Assistant United States Attorney
USDC No. 128302
District of Puerto Rico
Federal Building, Room 452
Chardon Avenue
Hato Rey, Puerto Rico 00918
(787) 766-5656

OF COUNSEL:

ERIC SCHAAF, Regional Counsel
NAOMI SHAPIRO, Assistant Regional Counsel
LOURDES RODRIGUEZ, Assistant Regional Counsel
U.S. Environmental Protection Agency Region II
290 Broadway, 16th Floor
New York, New York 10007
(212) 637-3221

CERTIFICATE OF SERVICE

I, Henry S. Friedman, hereby certify that on September 2, 2005 the **United States' Informative Motion** was filed electronically with the Clerk of Court using the CM/ECF System which will send notification to Jaime Sifre, Esq. and Marta E. Vila Baez, counsel for Defendants. In addition, copies of the **UNITED STATES' INFORMATIVE MOTION** was also served on September 2, 2005, by electronic mail to jsifre@sbsmnr.com and mvila@sbsmnr.com and by first-class mail postage prepaid, as follows:

Jaime Sifre, Esq.
Sanchez, Betances & Sifre
Bolivia # 33, Suite 500
Hato Rey, Puerto Rico 00918

/s/ Henry Friedman
HENRY S. FRIEDMAN